

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 EL PASO DIVISION
4
5 UNITED STATES OF AMERICA No. EP:05-CR-856-KC
6 v. El Paso, Texas
7 IGNACIO RAMOS, ET AL. February 13, 2006
8 PRETRIAL MATTERS
9 BEFORE THE HONORABLE KATHLEEN CARDONE
10 UNITED STATES DISTRICT JUDGE
11 VOLUME III OF XVII

12 APPEARANCES:

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25 computer-aided transcription.

David A. Perez, CSR, RPR

1 THE COURT: You may be seated.

2 THE CLERK: EP:05-CR-856, USA versus Ignacio Ramos and
3 Jose Alonso Compean.

4 MS. KANOF: Good morning. Debra Kanof and Jose Luis
5 Gonzalez for the United States, and we're ready for the motion
6 in limine hearing.

7 MS. STILLINGER: Good morning, Your Honor, Mary
8 Stillinger and Steve Peters for Mr. Ramos. We're ready,
9 Your Honor.

10 MS. RAMIREZ: Maria Ramirez on behalf of Jose Alonso
11 Compean, Your Honor; ready.

12 THE COURT: All right. This is Government's motion.
13 You may proceed.

14 MS. KANOF: Your Honor, the Government has made two
15 motions in limine in this case. Would the Court have a
16 preference which one I proceeded with first?

17 THE COURT: It doesn't matter to me at all, whichever
18 you'd prefer.

19 MS. KANOF: Then let me go first to the one I filed
20 first.

21 THE COURT: Okay. And let me ask a question, for
22 purposes of how you want to conduct the hearing. Why don't we
23 go ahead and address -- you can go ahead and address the first
24 motion. I will let them respond, and we'll take up the second
25 motion secondly. So we'll do the first motion completely

1 before we take up the second one.

2 MS. KANOF: Okay.

3 THE COURT: Because they are two separate issues.

4 MS. KANOF: Then the Government will first address the
5 Government's motion in limine. Actually, let me do -- I
6 think -- I don't even remember what order. But let me do the
7 Government's motion in limine pursuant to the Federal Rules of
8 Evidence 402 and 403, regarding irrelevant, prejudicial,
9 confusing, misleading and/or time-wasting evidence.

10 And basically, Judge, this is the lawlessness on the
11 border motion.

12 May I get my water, Your Honor?

13 THE COURT: Yes, you may.

14 MS. KANOF: The Government filed a motion, out of an
15 abundance of caution. The Government certainly doesn't believe
16 that any other incident other than the incident that's been
17 charged in the indictment is relevant to discuss for any
18 purpose, including state of mind, which I don't know if that
19 was what the defense was going to argue, except that they
20 said -- they may not have said it, but it's what the newspapers
21 say.

22 But in the newspaper this morning, Mr. Peters
23 mentioned something about state of mind of the defendant. And
24 so let me address the issues that I did in the motion in
25 limine. And, actually, I will be brief, because we filed a

1 lengthy motion in limine with a lot of information on it.

2 Recently, and that is in the past year, there has
3 been -- or, actually, not even -- in the last three weeks there
4 has been an incident that allegedly occurred in Hudspeth
5 County. And, for the record, Hudspeth County is contiguous
6 with El Paso County, to the south. And it also borders the
7 Rio Grande River and Mexico.

8 And, basically, there seems to have been some kind of
9 an altercation in Hudspeth County between the Hudspeth County
10 sheriffs and alleged drug dealers that's made a lot of press.
11 And it's made so much press that former Assistant United States
12 Attorney Mike McCall, now a congressman from the Austin area,
13 is holding hearings on it in Washington, D.C.

14 But to show you the danger of admitting this type --
15 first of all, that particular incident, and any incident that
16 occurred after February 17th of 2005, the indictment alleged
17 that all of the transactions with which the defendants are
18 charged occurred on February 17th, 2005.

19 So, certainly, anything that happened after that would
20 not be relevant or admissible, because it could not have gone
21 to any element of the offense, including the defendant's state
22 of mind, either of the defendants' state of mind, at that time.

23 And what the Government was more concerned about in
24 doing this is that the Government knows that not necessarily
25 these defense counsel, but other defense counsel, have

1 unexpectedly pulled out newspaper articles in closing argument,
2 or asked about things that have occurred in voir dire, that
3 they read in the newspaper, got on the Internet, not -- some of
4 the incidents not even happening in this particular
5 jurisdiction, which were certainly irrelevant and
6 inappropriate.

7 So, in thinking about the great deal of publicity that
8 this -- that the incidents on the border have brought, the
9 Government did a little bit of research to determine just
10 exactly what kind of incidents had occurred.

11 The Government -- the United States attorney's office
12 is called in whenever there is a -- an injury, I want to say,
13 whether it's the agent that has been the victim of assault or a
14 defendant that has been the victim of assault, so that the
15 United States Government has pretty good statistics regarding
16 the number of times something like that has occurred.

17 I have asked the case agent in this case, who is an
18 agent with the Department of Homeland Security, Office of the
19 Inspector General, first to make a determination and to make an
20 inquiry through Border Patrol records of how many incidents in
21 the year preceding February 17, 2005, there had been a
22 shooting, where a Border Patrol agent had discharged his
23 weapon. And he came up with one.

24 It was properly reported. One of the defendants in
25 this case actually responded to the scene and seized the

1 marijuana in that particular case. And the agents were
2 exonerated of any negative conduct.

3 I would point out to the Court that the shooting
4 was -- on the part of the Border Patrol agent -- that what
5 precipitated the shooting was not a shooting, it was a rock
6 throwing. The people on the other side of the border were
7 throwing rocks.

8 The only other incident that's occurred in the Fabens
9 division -- and both defendants have been exclusively in Fabens
10 for at least the last three years, some longer -- or one of
11 them longer -- was an incident that occurred approximately
12 three years ago, where a Border Patrol agent shot an individual
13 who had a load of marijuana, was attempting to run over the
14 Border Patrol agent at the time that he was shot. And it,
15 again, was ruled -- was -- all of the other incidents were
16 properly reported. And it was ruled a good shoot, and nothing
17 happened to that Border Patrol agent.

18 As far as any other -- those are the only reported
19 incidents that the Government is aware of in the last three
20 years in the Fabens sector.

21 I will also tell the Court that I had the agent
22 inquire regarding how many guns they had confiscated from
23 arrestees of any kind, arrestees having drugs, arrestees
24 smuggling aliens, or illegal aliens entering the country. And,
25 in the year preceding this incident, the number was zero.

1 I also spoke with representatives of law enforcement
2 agencies that work drugs on the border, to ask them how often
3 it is that they confiscate a gun from someone who has drugs,
4 either at the port of entry or on the border, and they said it
5 is very rare. That, first of all, traffickers know that they
6 get a higher sentence if they have a gun. And, secondly, they
7 want law enforcement to know -- and this is from debriefing
8 defendants -- they want law enforcement to know that they're
9 not carrying guns, so they don't get shot at.

10 And I will then posit to the Court, and ask the Court,
11 in the couple of years that Your Honor has been on the bench,
12 how many times this Court has seen a drug count, along with a
13 river case, an illegal alien, illegal smuggling of aliens, or
14 even a bridge case. And it is very rare.

15 I'm not talking about undercover buy busts or anything
16 like that. I'm talking about mules, which is the circumstance
17 that's pertinent to this case.

18 So the first question is whether or not it even
19 exists, whether or not there's a rational belief, other than
20 innuendo.

21 The second thing is, Your Honor, by its very
22 definition, law enforcement is dangerous. Law enforcement
23 agents are trained, because the -- the type of work they choose
24 to enter into has those dangers. So any danger that you would
25 anticipate, based on the statistics that we found, would be no

1 different than any other Border Patrol agent would have
2 anticipated at the time.

3 With regard to the specifics and the law in this case,
4 the Government has cited Rules 402 and 403. And the Court is
5 charged with going through a test in determining whether or not
6 any incident that has nothing to do with these defendants, or
7 has nothing to do with the incident, and -- and I don't think I
8 should be having to discuss or argue things that happened
9 later, because it couldn't have gone to this incident. But
10 things that may have preceded, that the Government doesn't know
11 about, that wasn't reported, the Court has to make a test.

12 And that test is laid out both by the Fifth Circuit
13 and by other circuits with regard to how the Court goes about
14 doing that.

15 And under Rule 402 and Rule 403, the first test that
16 the Government must determine is whether or not the evidence
17 is, in fact, relevant.

18 I will tell the Court that, you know, all of these
19 issues, the Court has very wide discretion. It is up to the
20 Court. And it is rarely, rarely reviewed for abuse of
21 discretion or flipped for use of discretion on appeal.

22 So the first determination the Court must make is if
23 it's relevant. In order to go through a relevant inquiry, the
24 Court must make a determination of what the target is before
25 the Court, so that it can judge whether the evidentiary, quote,

1 arrow, is properly aimed, quoting Wright and Miller.

2 Basically, there has to be the existence of a fact
3 that is of consequence to the determination of the action. Or,
4 as historically, Weinstein said, element one, element two, and
5 element three. And if the defendant's conduct was criminal,
6 can he be punished, and is he punished, unless defense one,
7 defense two, and defense three.

8 Well, the only element the Government can speculate,
9 the defense would think that another -- I can't even speculate
10 what element of the offense is charged. There are 12 offenses
11 charged in the indictment, not all offenses against all
12 defendants. But with regard -- the only element that -- or the
13 only offenses that this issue and relevance determination would
14 go to would be the shooting. That is the first three counts,
15 which allege assaults and the use of the gun, which are the
16 next counts, the two counts, use of a gun in a violent crime.

17 The -- so, basically, the judge who is making a
18 determination of relevance has to figure out what element of
19 the offense, or what defense that the defendant would draw,
20 would that information be relevant to.

21 The second thing that the Court has to do -- and I
22 cited all of the authority for this in the Government's motion.

23 The second determination that the Court has to make
24 is, Okay, it's relevant. Does that mean it's admissible? Even
25 relevant evidence the Court, in its discretion, can exclude for

1 many different reasons, the first being that the probative
2 value outweighs the prejudicial value.

3 And, in this instance, the Government will posit that
4 any -- the proof of any other incident that would have occurred
5 on the border has no probative value. So it's certainly --
6 that's the probative value to an element of the offense, as the
7 Court -- as the Government previously stated.

8 And there's case law that talks about that. And I
9 think the most dramatic case, which is also the most recently
10 reported case, is Watson. That's the Fifth Circuit case that
11 talks about -- I mean the Ninth Circuit case that -- that
12 specifically addresses some very prejudicial evidence.

13 In Watson, an officer -- he was a Department of
14 Defense police officer -- basically assaulted someone. But the
15 person that he assaulted assaulted him first. It was on
16 shipboard. And, basically, what happened is you had a drunk
17 victim/witness who was abusive, who threw the first punch. And
18 the defendant was an officer of the Department of Defense
19 police force. He responded with force.

20 The victim/witness didn't let up. Actually, he jumped
21 on the Department of Defense officer, was very combative with
22 him, spit at him, spit in his face. And yet, the defendant was
23 convicted because he used his baton and injured the
24 victim/witness. And the Court ruled -- the Ninth Circuit ruled
25 that it was not an abuse of discretion for the District Court

1 to exclude, one, the fact that the defendant -- or the
2 victim/witness was legally intoxicated. He was a .087. The
3 Court excluded it, and it was not error. And excluded the fact
4 that that very same victim had been engaged -- and this is very
5 pertinent to the other motion here -- had been engaged in
6 altercations when he was drunk before, assaults.

7 A lot of this, by the way, Your Honor -- a lot of this
8 case law goes to both of the motions. And the point here being
9 that's very relevant. It is very relevant that he gets in
10 fights when he's drunk, and he was drunk that day. And yet the
11 Court excluded it, finding that the probative value was less
12 than the prejudicial value of the evidence in that case,
13 because the issue wasn't the state of the victim. The issue
14 was the mindset of the defendant at the time.

15 Secondly, Your Honor can make a determination as to
16 whether the evidence sought to be admitted by defense of other
17 incidents on the border -- and I don't even know if they have
18 any evidence of other incidents on the border that didn't
19 happen after this, because all of the newspaper articles are
20 saying in the last year. And this happened over a year -- just
21 a year ago. So I don't even know what -- they might attempt to
22 provide a more concerted argument about, Oh, we have a very
23 dangerous border, without evidence to follow up, because that
24 evidence probably does not exist.

25 But, once found relevant, that the Court can find it's

1 confusing, that it's misleading, or that it's time wasting.

2 And I think this is really important, Judge. If the
3 defense were allowed to talk about any other incidents that may
4 have occurred, first of all, the Government would ask the Court
5 to have them show how -- how they know about it, how good that
6 evidence is; if the evidence is reliable, it's not just
7 hearsay, rumor, innuendo, speculation; the specific instance,
8 and how that specific instance goes to an element of this
9 offense. And I'm just -- I'm not aware of it.

10 I'm more concerned about opening statement, closing
11 argument, and cross-examination than I am their ability to put
12 on that evidence. Because the only purpose for it would not be
13 to go to an element of the offense. It would be the
14 prejudicial value to incite the people that live close to the
15 border or live on the border, that this is a lawless community;
16 and, therefore, the defendants should be entitled to talk about
17 how they should be nullified by the jury.

18 And, of course, jury nullification is not an
19 appropriate argument at any point in time, and asking the Court
20 to disregard the facts and disregard the law is never proper.

21 THE COURT: All right. Response?

22 MR. PETERS: Yes, Your Honor.

23 THE COURT: So I'm clear, are you going -- there's two
24 defendants. Are you going to argue on behalf of both, or are
25 we -- am I going to hear from you and then counsel --

1 MR. PETERS: I'm only arguing on behalf of Mr. Ramos,
2 Your Honor.

3 THE COURT: Okay. Go ahead.

4 MR. PETERS: Your Honor, the use of force guidelines
5 that the Border Patrol had in effect on the day of the
6 shooting, and which Mr. Ramos was subject to, permitted him to
7 discharge his firearm -- and this is a quote -- when the
8 officer reasonably believes that the person at whom the firearm
9 is to be discharged possesses the means, the intent, and the
10 opportunity of causing death or grievous bodily harm to the
11 officer or another person.

12 Now, the Supreme Court has described the Fourth
13 Amendment limitations on when a police officer may shoot a
14 fleeting subject as essentially being a matter of having
15 probable cause to believe the same thing, what I just said,
16 that the person had the means, the intent, and the opportunity
17 of causing death or serious bodily -- or excuse me, grievous
18 bodily harm upon the officer or another person.

19 So what we've got here is a question of probable
20 cause, and it is a question of whether it is -- that invokes
21 notions of objective reasonableness, and it also invokes all
22 the law about probable cause.

23 In other words, in *Ornelas versus the United States*,
24 which is at 517 US 690, a 1996 case, the Supreme Court
25 described probable cause as a common sense nontechnical

1 conception dealing with the factual and practical
2 considerations of everyday life on which reasonable and prudent
3 men -- that's what it said -- not legal technicians, act. It
4 exists where the known facts and circumstances are sufficient
5 to warrant a man of reasonable prudence in the belief, and a
6 police officer is entitled to draw impressions based on his own
7 experience, including an impression of whether probable cause
8 exists.

9 Now, obviously, there is a difference in the
10 calculation that would go into the mind of a police officer
11 attempting to act in an objectively reasonable manner if --
12 depending on whether the incident was occurring at the Cielo
13 Vista Mall or whether it was occurring down on the river, in an
14 area known for drug smuggling.

15 But I think I can assure counsel and the Court that we
16 don't have any intention of putting on evidence of acts which
17 have occurred since this incident, because they obviously
18 couldn't have influenced the determination of reasonable -- of
19 reasonableness in the mind of our client.

20 But anything that happened before then, the
21 dangerousness of this area, is extraordinarily relevant to the
22 reasonableness, the objective reasonableness of the
23 determination that Mr. Ramos made that this individual had a
24 weapon.

25 Now, the Government, I think, somewhat unreasonably,

1 is giving you statistics about the number of shootings and the
2 number of aliens or drug smugglers who were actually found to
3 have had firearms. But that parses it a little thin, in my
4 opinion. The evidence in this case will show that Mr. Ramos
5 himself has been assaulted on several occasions. He's been
6 stabbed with a hypodermic needle. He's had -- and that other
7 agents routinely suffer these types of attacks.

8 Now, whether -- I mean, I guess what the Government is
9 saying, Mr. Ramos is supposed to wait until someone actually
10 shot him before he can surmise that, when the evidence
11 suggested that this fleeing alien had a weapon, that he was
12 able to make that determination.

13 But really the point, for the standpoint of this
14 motion, is that we should be entitled to -- to provide the jury
15 the objective facts, as well as the subjective facts, that
16 would make the determination Mr. Ramos made that he was within
17 the guidelines of the Border Patrol, and also within the
18 Constitutional scope of the Fourth Amendment, if he fired his
19 weapon.

20 And to exclude evidence that this is a dangerous area
21 would allow them to conflate the situation down on the border,
22 which is a dangerous area, regardless of what their statistics
23 purport to show, with actions that might have occurred in a
24 schoolyard or in a church or right here on Kansas Street.

25 So the dangerousness of the border is highly relevant.

1 Mr. Ramos is entitled to get into it. And we would ask,
2 therefore, that at least as to any incident which might have
3 reasonably influenced his judgment in February of 2005, that
4 their motion be denied.

5 Thank you.

6 THE COURT: Before you leave, Mr. Peters, I just have
7 a question for you. And that has to do with my understanding
8 of -- a portion of the Government's motion has to do with the
9 publicity, the issues of the dangerousness of the border, as
10 portrayed in the newspaper, and the concern that defense
11 counsel will make reference or mention of that.

12 Am I hearing you say that it is not your intention to
13 refer to that in any way, only to specific incidents that your
14 client was aware of at the time?

15 MR. PETERS: Your Honor, we're not -- we're -- okay.
16 We might want to get into specific incidents that my client was
17 aware of. And we might want to generally get into the
18 notion -- the nature -- the notion of the dangerousness of the
19 border.

20 We certainly don't want to get into specific incidents
21 that have occurred since then, since the incident that's the
22 subject of this case. And -- but -- but, for example, asking a
23 witness whether or not the border is a dangerous place, whether
24 or not there are assaults on police officers or on Border
25 Patrol agents, we think that's reasonable.

1 And if -- and if a Government witness were, for
2 example, to deny that that was the case, that Border Patrol
3 agents are subjected to these type of assaults, it seems to me
4 it would reasonable to cross-examine them about statements made
5 by the head of the Border Patrol to the contrary.

6 But it's not our intention to put on a big show for
7 the jury of a bunch of unrelated incidents, especially
8 incidents that didn't happen to Mr. Ramos, and especially
9 incidents that happened since February 2005.

10 THE COURT: You would agree with me -- and I think you
11 specifically said -- that we're talking about the defendant's
12 state of mind at the time of the incident.

13 MR. PETERS: Yes, we are. But it's not an entirely
14 subjective issue what his state of mind is, because there's a
15 reasonableness element. And so the reasonableness has to be
16 viewed in light of the circumstances as they objectively exist.
17 So it's not only what he knew, it might be what he heard about.
18 But then, again, these things aren't offered so much for the
19 proof of the matter asserted as they are -- as they would be
20 offered for showing the reasonableness of the defendant's state
21 of mind.

22 THE COURT: Okay. But -- and I believe Ms. Kanof
23 addressed the issue of opening statement, voir dire, and
24 closing statement. What you're referring to right now is the
25 issue of cross -- either direct or cross-examination, regarding

1 incidents or state of mind.

2 I think Ms. Kanof's -- one of Ms. Kanof's main
3 concerns that she has raised is the issue of whether or not
4 counsel will make general reference to dangerousness of the
5 border, without any evidence. Certainly, before trial, there
6 could be no evidence. There could be just what-you-
7 intended-to-offer kind of information, but certainly no
8 evidence that had been submitted to the jury. And so I think
9 her concern is that you're going to just make general reference
10 to things that -- that there's no proof of dangerousness.

11 MR. PETERS: Well, Your Honor, certainly, we're
12 responsible in any opening statement to conform our statements
13 to what we believe the evidence is going to show. That's no
14 different here than in any other case.

15 We do believe the evidence will show that this area of
16 the border is very dangerous for Border Patrol agents. We
17 think that evidence is -- is important. We think it is --
18 we're entitled to get into it, and we expect that that's what
19 the evidence is going to be.

20 And -- and it -- you know, we're -- that's not the
21 same thing as going into detail about specific instances
22 involving other Border Patrol agents. I don't think we have
23 any intention of doing that; certainly, not in opening
24 argument.

25 THE COURT: And are we talking about testimony that is

1 other than the defendant's testimony about these issues? Are
2 we talking about defen- -- and I understand the defendant
3 doesn't have to testify. But it seems to me that it is the
4 defendant's state of mind that is relevant here. And so to get
5 up and even have the head of Border Patrol get up and say that
6 it's dangerous to be out in the Fabens area on the border
7 doesn't necessarily mean the defendants knew that.

8 MR. PETERS: Well, that, in itself, would mean the
9 defendant knew that. But remember, Your Honor, as I've said,
10 there's a standard of objective reasonableness here. Okay? It
11 would not be a defense, I don't think, if we were able to prove
12 that the defendant just imagined that this was a dangerous area
13 when, in fact, it wasn't.

14 I think that what goes to the determination of
15 probable cause, that allows him to make a seizure of this
16 individual as effectuated, if it was, by the gunshot, is
17 objective reasonableness. And the dangerousness of the border
18 is very important to that. I mean, it's necessary to determine
19 whether it was objective.

20 I mean, I go back to this thing I've tried to -- tried
21 to say about it, that if this had occurred at Cielo Vista Mall,
22 it would be a lot less reasonable if a -- if a -- you know,
23 somebody's grandma has some object in her hand that he thinks
24 is a firearm, you know, it would a lot less reasonable for him
25 to shoot that person in those situations than in a situation

1 where there really is a wild and lawless land, and a person has
2 something in his hand that may be a firearm. The decision is
3 much more reasonable in the latter than in the former. And,
4 therefore, the dangerousness of the border is relevant to the
5 objective reasonableness of the decision.

6 THE COURT: But how do we -- I guess what I'm not
7 following here, Mr. Peters, is how do we even get there, if we
8 don't know what the defendant knew at the time?

9 I'll give you an example. We've heard a lot about
10 what's happened recently at Hudspeth County. Let's assume
11 you -- that had happened the week before this incident. Let's
12 assume that the -- you were to -- one of the people that were
13 involved in that incident were to get in here and testify that
14 the week before that happened to him, that he had worked with
15 one of the defendants, all of that kind of information, and
16 that, obviously, it's a dangerous border, because that all
17 happened to him.

18 In a vacuum, without one of these defendants knowing
19 that, how -- how does it possibly become relevant to the
20 defendant's state of mind as to why he would pull a gun?

21 MR. PETERS: It is not relevant absent the defendant's
22 being aware of it. I agree with the Court. That is absolutely
23 correct.

24 THE COURT: Okay.

25 MR. PETERS: The defendants were aware of it, and I

1 believe that's what the evidence is going to show.

2 THE COURT: Okay. All right. I was just trying to
3 understand where we're trying to go. Okay.

4 All right. Ms. Kanof, response?

5 MS. KANOF: Your Honor, I think the defense is trying
6 to change the law; provided no authority and no case law to the
7 Court that because an area that someone is patrolling, whether
8 they be an El Paso police officer or whether they be a Border
9 Patrol agent, or whether they be a Department of Defense police
10 officer, that the area in which they are patrolling has
11 anything to do with their right to shoot or has anything to do
12 with intent, because it doesn't. And he has provided you no
13 case law.

14 I have to point out, Judge, that, you know, I would
15 love to have had a response to my motions, so then I could
16 researched that case law and had a little bit before me.
17 Because I researched it in great depth and didn't find anything
18 that permitted what Mr. Peters is trying to get the Court to
19 permit.

20 What he's saying, and I will quote, We have evidence
21 that will show the border is dangerous. Okay? We have
22 evidence that will show the border is dangerous.

23 That's exactly what the Government's motion is about.
24 Because any other incident that happened on the border is not
25 relevant. It's like saying putting an El Paso police officer

1 in the Third Ward or the Second Ward, where they know there are
2 lots of gangs, changes their right to use excessive force,
3 because that's what he's saying.

4 Intent is an element of this crime. State of mind is
5 not a defense. The law on state of mind tells the Court when
6 it is appropriate as a defense: justification, duress,
7 necessity, insanity. State of mind goes to punishment; it does
8 not go to guilt or innocence. The way that the defendant is
9 arguing it, he's basically saying, you know, I knew of these
10 other incidents. I was hit once before -- and he was. He hurt
11 his hand one other time -- not similarly with this.

12 That doesn't make it a dangerous border, because
13 police officers encounter that every single day. Their job is
14 dangerous. That is why they are trained. That is why they are
15 allowed to carry guns to begin with.

16 In this instance, the Court must assess whether or not
17 another incident in which the defendant was involved goes to
18 his intent on February 17, 2005. And it can't. And there is
19 no case law that says that it is relevant.

20 But I will point something else out to the Court. And
21 I think the defense is on a slippery -- well, first of all,
22 asking the Court to go on a slippery slope, because all they're
23 saying is, Well, we -- we certainly don't want all these
24 incidents that happened later, but want the incidents that
25 happened before that he knew about.

1 The only ones that he could have had personal
2 knowledge of, other than rumor and innuendo again, which is
3 what the Government is trying to keep out, is the ones he was
4 involved in. And I don't think he's ever been shot at. I have
5 no evidence that he's ever been shot at. And we've looked at
6 his IA file.

7 But the slippery slope they're going down is that if
8 the Court were to allow -- I don't know what the Court's ruling
9 is going to be on the 404(b). But the defendant is a violent
10 man, Ramos. He has three times been arrested for assault and
11 domestic violence. One of those assaultive offenses included,
12 when his five-year-old little boy tried to defend his mother,
13 hitting the five-year-old little boy. He has been suspended
14 from the Border Patrol for failure to report two of those
15 assaults.

16 So if we're going to talk about state of mind by
17 bringing in his fear of the dangerousness on the border, then
18 the Government gets to counter that state of mind with, No,
19 you've been to anger management courses twice. The first one
20 didn't work. You have three times been arrested, but you got
21 your wife to drop the charges. And you failed to report those
22 arrests.

23 That all -- I think it comes in for other reasons
24 anyway. But the minute they start being allowed to talk about
25 the defendant's state of mind because he was scared because

1 it's such a dangerous border, then, certainly, the Government
2 is going to get to counter with that.

3 But not only counter with that, but do exactly what
4 the case law that the Government cited says, and that is, stop
5 trying the defendants and start trying the border.

6 The whole intent and purpose of admitting extraneous
7 acts, whether they occurred before or after this shooting, is
8 to talk about something other than the defendant's
9 responsibility. It's to talk about how dangerous it is. And
10 there is nothing in the law, and there is nothing in any law
11 enforcement -- I mean, the police officers in El Paso face the
12 same dangers. They walk along the border themselves. Do they
13 have any more right, as far as probable cause is concerned,
14 reasonable suspicion? No, they have less right, because they
15 don't get to stop for reasonable suspicion of immigration
16 violations like the Border Patrol agents do.

17 But again, just talking about -- you know, I quickly
18 wrote down, as fast as I could, the one case that Mr. Peters
19 wants the Court to base all of their decision on about letting
20 in specific incidents of dangerousness on the border. And what
21 it talked about is the mindset that an individual is in that is
22 a law enforcement officer when they're making a determination
23 of whether or not there's probable cause.

24 And, briefly, I think the case said that they can
25 incorporate objective and subjective facts. I don't even think

1 that case -- and I haven't read it. I don't even think that
2 case says those subjective facts have to do with specific
3 instances that occurred before. Because, Your Honor, if we
4 permitted law enforcement officers to base their judgment on
5 what had happened to them, each individually, we would not only
6 be fighting evidence of lawlessness, we would live in a lawless
7 society.

8 THE COURT: Any response, Mr. Peters?

9 MR. PETERS: Briefly, Your Honor, I would just point
10 out, first of all, that the Government's motion was filed on
11 February 6th. I was in trial last week in the 168th District
12 Court. We didn't finish until Friday afternoon. It hasn't
13 been ten days, which is required by the rule. If they want --
14 if they want me to write a brief this afternoon, I can do it.
15 But I think it's -- I really haven't had an opportunity to
16 respond in writing to their brief.

17 And, secondly, I think that it is incorrect to say
18 that the reason we want the -- or that I've said -- and if I
19 seem to have said this, let me clarify it. I'm not saying that
20 we want to bring in evidence of other dangerous situations on
21 the border to justify a shooting as to the defendant's state of
22 mind.

23 But the defendant's state of mind in deciding whether
24 or not he was -- the question is not whether or not the victim
25 had a firearm. That's not the dispositive issue in this case,

1 or whether he was pointing a firearm at him.

2 The question is whether or not the defendant could
3 form a reasonable belief that the situations which are required
4 in order to justify a shooting exists. And I'm sorry, but I
5 just disagree with the Government, if they think that that
6 belief is going to be formed in a vacuum. It's going to be
7 formed based on the totality of the circumstances. And one of
8 the circumstances is where this is and what's going on there
9 now.

10 And that's all we're saying. We're not trying to say
11 that -- that, you know, there's some kind of additional
12 mens rea element different from -- from anything else. That's
13 not what we're saying. We're saying that an officer is
14 entitled to take into account the totality of the
15 circumstances. And the types of dangerous activity that
16 happened with -- on -- in this area, especially with
17 individuals -- and we're going to get into this in a minute on
18 their other motion -- but especially with individuals involved
19 in the types of activity that Mr. Aldrete-Davila was involved
20 in on these days, are relevant to the determination of whether
21 or not a danger to the officer or another exists at that
22 moment. So that's -- that's why we think it's relevant,
23 Your Honor.

24 THE COURT: All right. Who is going to be arguing --
25 Ms. Ramirez?

1 MS. RAMIREZ: Judge, I won't -- I'll try not to repeat
2 everything Mr. Peters said. But I agree, and I disagree with
3 Ms. Kanof. This isn't about letting in an extraneous act or
4 extraneous acts about the dangerousness of the border.

5 The fact that the border is dangerous and that our
6 clients are -- Mr. Compean is a Border Patrol agent that works
7 on the border every day is not an extraneous act. The fact
8 that he's a law enforcement officer or Border Patrol agent and
9 carries a weapon and has to make a decision about whether he's
10 going to use that weapon is not an extraneous act.

11 And I believe that the Government wants to try this
12 case in a sterile situation and keep those facts from the jury,
13 and we can't do that. We have to try this case under the
14 totality of the circumstances. And I believe that there is no
15 way to try this case without presenting the total facts to the
16 jury.

17 The fact is that the border is dangerous, and it was
18 dangerous before February 17, 2005, and that my client
19 perceived it to be dangerous, is important and is relevant to
20 this case.

21 The fact that he had to make a decision of whether he
22 was going to pull out his weapon, when he was confronted by
23 that drug smuggler, is important for this case, and it is
24 relevant. And it made his actions of whether he had to pull
25 out that weapon more or less probable, and that makes it

1 relevant to this case.

2 And the Government can't come up here -- and I can't
3 believe they're coming up here and trying to say, Oh, let's
4 keep that from the jury. Let's keep the fact that the border
5 is dangerous away from the jury. Let's keep instances of the
6 fact that your client knew that the border was dangerous away
7 from the jury.

8 That, of course, has every single thing to do with my
9 client's state of mind and his objective reasonableness, that
10 decision that he had to make before he stopped this person,
11 before he pulled out his weapon.

12 This is not just a person that carries a weapon. This
13 is a Border Patrol agent that has to make decisions of whether
14 he has to pull out that weapon. And they need to -- they need
15 to understand that. The Government needs to understand that.
16 The jury needs to understand that. And to try this case in a
17 vacuum, to try this case under a sterile situation, is just not
18 fair, and it denies my client a fair trial.

19 And I think all that evidence is very relevant to this
20 case, and I would ask the Court to deny the Government's motion
21 and to let in the -- that evidence.

22 I agree that that evidence after February 17th, '05,
23 is not relevant. I disagree, however, with Ms. Kanof, that
24 only the incidents around Fabens are relevant. I think all
25 incidents that my client had knowledge of are relevant, that

1 happened prior to February 17, '05.

2 And so I would ask the Court to deny the Government's
3 motion as they pertain to the dangerousness of the border after
4 February 17 of '05.

5 THE COURT: You mean as they pertain to the border
6 before February 17th, 2005?

7 MS. RAMIREZ: No, as they pertain to the border after
8 February 17th.

9 THE COURT: You want me to deny her motion as to that.
10 Is that what I understood?

11 MS. RAMIREZ: No. I want you to grant her motion --

12 THE COURT: As to that. Okay.

13 MS. RAMIREZ: Yes, Your Honor. I'm sorry.

14 THE COURT: As to that. That's what I thought. All
15 right. Thank you.

16 MS. RAMIREZ: Thank you.

17 THE COURT: All right. Ms. Kanof?

18 MS. KANOF: Your Honor, I don't know how you can grant
19 a motion as to what happened after and not before, because I
20 don't know how the jurors can separate it. They live in the
21 community, and it's been all over the TV. It's been all over
22 the newspapers.

23 And -- and an interesting thing occurred,
24 congressman -- the United States congressman from this district
25 is actually disagreeing with the sheriff about what happened.

1 And so the first thing you see blasted all over the newspaper
2 is one side of the story. Then they go up to Washington, D.C.,
3 and the sheriff is telling everybody the story. And then the
4 United States congressman disagrees with him.

5 And that's the problem with talking about any specific
6 instances. I'm so glad Ms. Ramirez said the following, that
7 the evidence needs to be admitted because we need to know what
8 was in her client, Compean's, mind, when was he was confronted
9 by the drug smuggler.

10 Your Honor, he did not know that Osvaldo
11 Davila-Aldrete was a drug smuggler when he did it. And that's
12 the problem with bringing in these other instances. Because
13 what it does is, it makes an assumption that this -- that they
14 had knowledge that the individual in that van was a drug
15 smuggler.

16 The first callout by Ms. Ramirez's client is, blue
17 van.

18 The victim wasn't in a blue van. He was in a gray
19 van.

20 Her client saw a blue van crossing, hitting some
21 sensors.

22 The victim was in a gray van.

23 The second thing is that Mr. Ramos is the one that
24 chases in a high-speed chase the van to the border. But
25 Mr. Compean is not around. He does not know what's in that

1 van. He is not knowingly confronted by a drug smuggler. And
2 if her client has some kind of posttraumatic stress from being
3 a Border Patrol agent, and assumes that every single person
4 running on the border has a load of marijuana, he shouldn't be
5 a Border Patrol officer. Then maybe he has a diminished
6 capacity defense.

7 But he is up on the levee road. He is separated by
8 the van -- from the van by a dirty ditch of murky water. He
9 doesn't know what's in the van. He doesn't know why they were
10 chasing that gray van, because he saw a blue van. And yet he
11 pulls out his gun and he shoots a man that's fleeing from him
12 in the back.

13 And I'm not going to go into the facts, because this
14 isn't the time. But that's ex- -- what Ms. Ramirez said is
15 exactly the problem the Government is trying to prevent. She
16 said he was confronted by that drug smuggler. But he did not
17 know at the time.

18 Border Patrol agents voluntarily return over a
19 thousand people a day. Do some of them start running, whether
20 they're in a vehicle or not, as soon as they see a Border
21 Patrol agent? You bet. "La Migra." Run.

22 That does not allow a Border Patrol agent, then, to
23 assume that person is dangerous, to assume that backpack has
24 marijuana in it. It does not permit that.

25 They are allowed, under reasonable suspicion, to stop

1 for an immigration stop. Border Patrol does not even have
2 original authority on drugs. It is not their first, and it is
3 not their second requirement at the border. Their rules, first
4 of all, are to enforce immigration laws. The second rule is to
5 protect for terrorism purposes. They only get secondary
6 authority on drugs if they happen to catch drugs.

7 Their job is not to catch drug dealers. And that is
8 exactly the problem in this case. It goes to the prong of
9 confusion. It goes to the prong of misleading the jury. It
10 goes to the prong of wasting time, because it opens up all
11 kinds of doors of what the real job is of these individuals.

12 You know, I'll tell -- I'll tell the Court,
13 Mr. Compean expended 14 rounds and missed him every single time
14 as he was running, Osvaldo Davila. 14 times he shot.

15 What was his state of mind? The guy was running away
16 from him. Confronting a drug smuggler? No. He didn't know
17 what was in the van. So why would his incidents of prior drug
18 smugglers have any relevance?

19 That's all I have to say.

20 THE COURT: All right. Ms. Ramirez?

21 MS. RAMIREZ: Well, I'm glad Ms. Kanof isn't getting
22 into the facts of the case, Judge.

23 Judge, again, the dangerousness of the border is --
24 prior to February 17, '05, is very relevant in this case. It's
25 very relevant to my client's state of mind.

1 I believe that the facts, as presented by Ms. Kanof up
2 here, are just a show. She knows the press is here. She
3 misstated the facts. My client saw two people crossing the
4 river going back to Mexico after they loaded the van. He
5 believed that they were loading the van with the -- back up --
6 what's going to be the subject of this case -- with marijuana.
7 He saw it leaving the area.

8 As soon as somebody saw the van in Fabens, it started
9 going south for the border. The agents knew that there was
10 marijuana in the van, and they made it known to my client that
11 there was marijuana in the van. And that's what he's going to
12 testify to, I believe, if he testifies.

13 I don't believe that anything, as I stated, after
14 February 17th, '05, is going to come up. Although I believe,
15 as Mr. Peters stated, that if the agents come up here and say
16 that the border is not dangerous, although I don't think they
17 are going to say that, that we have a right to cross-examine
18 them on those issues.

19 But, of course, February 17th, '05, those incidents
20 prior to that are very relevant to my client's state of mind
21 when he was standing up there on that ditch and he was
22 confronted by Mr. Aldrete-Davila as he was trying to flee and
23 go back to Mexico.

24 And so I would ask the Court to allow us -- to allow
25 me to get into those incidences during the trial. If I -- if I

1 say anything about the dangerousness of the border during
2 opening statement, it's because I believe that the evidence is
3 going to -- is going to show that during my evidence or during
4 the evidence of the Government.

5 If I cross-examine any witnesses about that, it's
6 because they say that the border is not dangerous.

7 If I say that during closing argument, it's because
8 the evidence supported that, or because I can make a reasonable
9 inference from the evidence during closing argument. And that
10 is what I'm going to argue during my case.

11 THE COURT: For -- and I have the same question for
12 you, Mr. Peters, so you will have a moment to prepare your
13 answer.

14 But for the Court's edification, Ms. Ramirez, what
15 witnesses do you propose regarding the -- to testify regarding
16 the issues of totality and reasonableness?

17 MS. RAMIREZ: If my client -- if my client testifies.

18 THE COURT: All right.

19 MS. RAMIREZ: Osvaldo Aldrete-Davila.

20 THE COURT: All right.

21 MS. RAMIREZ: I believe the Government's witnesses are
22 going to testify about the totality of the circumstances, and
23 that would be four Border Patrol agents.

24 I know that the Government has two agents, Your Honor,
25 of a December '04 shooting that they are going to try and

1 present. But we are -- I am going to try and exclude that
2 testimony.

3 And that is all I believe that are going to be
4 presented as to the dangerousness of the border. I think it's
5 more relevant for my client's state of mind and the objective
6 reasonableness when he pulled out that weapon.

7 THE COURT: All right. Thank you.

8 MS. KANOF: Your Honor, if I may respond just about
9 the Government's witnesses.

10 Out of an abundance of caution, we gave them rebuttal
11 evidence. We would never, ever put on evidence of anything
12 other than this occurrence on February 17, 2005. But we did
13 give them files of other incidents that their clients were
14 involved in, because if they were allowed to bring this up,
15 then we would use it in rebuttal. But the Government doesn't
16 intend to do it in its case-in-chief.

17 THE COURT: All right.

18 Mr. Peters, the same question for you, and then you
19 can take up anything else you wish to take up.

20 MR. PETERS: Your Honor, of course, you know, as I'm
21 sure Your Honor knows, a lot of decisions are made on the fly
22 during trial.

23 THE COURT: Sure.

24 MR. PETERS: But what I can anticipate at this time is
25 if either of the defendants are going to testify -- obviously,

1 we're not going to commit to that. But assuming that either of
2 them did, we think that they would be able to get into is this.

3 Other agents that we expect to be called by the
4 Government, we may -- we may want to ask them about it, too.

5 Now, if it becomes an issue -- and I don't really see
6 it becoming an issue. But if -- if -- were the Government to
7 put on evidence that the border is, in fact, not dangerous,
8 well, then -- then we might want to call specific witnesses for
9 that purpose.

10 I don't -- I doubt that's going to be the case. I
11 mean, I -- of course, I have no way of knowing what they're
12 planning to do. But that's what we would anticipate,
13 basically, something to go into with our -- with the defendants
14 and with other Border Patrol agents who may be called to
15 testify.

16 THE COURT: All right. All right.

17 Are we ready on the second part of the motion, or,
18 rather, the second motion in limine?

19 MS. KANOF: Yes, Your Honor. And, as I said before, a
20 lot of the -- a lot of the evidence -- a lot of the case law
21 and the rules are relevant to both of the issues.

22 This is really fact specific. And -- well, it's not
23 entirely fact specific. A Border Patrol agent has the right,
24 based on reasonable suspicion, to stop an individual to make an
25 immigration determination. And that's what they're there for.

1 And in this particular instance, the Defendant
2 Compean -- and we do have the radio transmission and a
3 transcript, and we have provided it to the defense -- calls
4 out, Blue van leaving 76 area. And then the next thing that
5 you know is, they see a gray van going north toward the
6 stoplight in Fabens. And the radio transmission supports that.

7 And then one agent's -- and the van sees Defendant
8 Ramos's vehicle and turns around and goes back south -- this
9 is, again, a gray van, not a blue van -- and goes again south.

10 And Oscar Juarez starts to follow him, but Mr. Ramos
11 cuts in from a side street and becomes the person immediately
12 behind them.

13 They speed up. The van speeds up. The van gets to
14 the border. The estimate is they're going 65 to 70 miles an
15 hour, by every single person we've talked to. One says it
16 could have been as fast as 90. I don't know.

17 And they -- they arrive at the irrigation ditch, the
18 van gets stuck, the victim/witness jumps out of the van, runs
19 into the ditch, and encountered Mr. Compean, who is up on the
20 levee.

21 Maybe Mr. Compean made a mistake when he called out a
22 blue van. He did not call out, because we have the radio
23 traffic, that it was being loaded with marijuana. He only
24 called out that there was a blue van leaving the 76 area. So,
25 of course, the Government believed that there was no way he

1 could know what was in that van.

2 And that -- that doesn't really make a difference in
3 this instance, but it could make some difference. And -- but
4 his immigration status, that he was illegally in the
5 United States, they didn't know it, because they weren't making
6 an immigration stop. They were in hot pursuit, which they
7 cannot do to make an immigration stop or to investigate drugs,
8 which is secondary, as I said before.

9 And the Government's concern is that the -- under
10 rule -- Rule 608 is very specific. What are you going to offer
11 the evidence of the marijuana for and the evidence of
12 immigration status for?

13 Rule 608 prohibits the admission of extrinsic
14 evidence, specific factual extrinsic evidence, like
15 Mr. Aldrete-Davila's possession of marijuana at the time or at
16 any other time, his transportation of marijuana, or anything
17 else, to prove character.

18 The only thing -- and, basically, cross-examining
19 Mr. Aldrete-Davila about that, the only purpose would be to go
20 to his truth or untruth. And extrinsic acts like that don't --
21 and the Government cited specific case law where possession of
22 drugs, trafficking of drugs, taking drugs, does not go to
23 truthfulness or untruthfulness of character. The only thing
24 you can do that with is by reputation.

25 If they want to bring somebody from Mexico who wants

1 to opine that Mr. Aldrete-Davila has a bad reputation and he's
2 a liar, fine. But, based on the rules of evidence and all the
3 case law that I cited, they cannot cross-examine him about his
4 drug trafficking or about his possession of marijuana on that
5 day to impeach him.

6 Okay. So that goes to whether or not the fact that he
7 had marijuana at the time, or that he was an illegal alien, is
8 admissible for a different purpose.

9 And, in this case, that other purpose would be --
10 again, it goes to this -- this nebulous -- that's the reason
11 they were more aggressive or could shoot at him.

12 In order for them to prove that they could be more
13 aggressive or quicker on the draw because he had marijuana,
14 they would have to provide the Court with some law, some
15 statute, some regulation from Border Patrol that says, By the
16 way, if you think they have marijuana, that makes them more
17 dangerous, so, therefore, you can shoot them faster.

18 And again, the defense is attempting to create a
19 different requirement under the law to prove and disprove
20 intent.

21 Even if they knew that he had marijuana, their action
22 would not be justified in this case. It really doesn't change.
23 It's not a justification defense. It doesn't change anything.

24 The other thing is this. They knew he had marijuana.
25 They saw them loading bundles. I don't recall anybody saying

1 they ran across and field-tested those bundles in that blue
2 van, or that that van stopped, or anyone saw it stop, or it had
3 time to stop to transfer the bundles into a gray van, or that
4 the defendant looked like he might not legally be in the
5 United States by his appearance or the clothing that he was
6 wearing.

7 I mean, basically, they are trying to try this case on
8 things other than the facts that occurred in this particular
9 instance.

10 And again, I refer the Court to Watson. It doesn't
11 matter that he had marijuana, because it doesn't go to an
12 element of the offense.

13 Does it go to a defense? Does it go to justification?
14 That's not what the law says on justification. Does it go to
15 duress or necessity? It does not.

16 And again, the defense -- Ms. Ramirez, in particular,
17 presented the Court with no law that substantiates this. The
18 Government has given the Court abundant law, including the fact
19 that it's entirely in the Court's discretion.

20 But the prejudicial value -- is it relevant? Perhaps.
21 But the prejudicial value dramatically outweighs the probative
22 value in this particular instance, because the prejudicial
23 value is then to focus away from the defendants and make this
24 trial about drug traffickers, particularly Mr. Aldrete-Davila,
25 and make it about he's the bad guy.

1 And that also kind of goes to the Government's motion
2 to redact, which is sort of secondary. Should the Court decide
3 that the marijuana is admissible, the amount of marijuana is
4 certainly not relevant to anything in this case.

5 They certainly -- even if you believe Mr. Compean's
6 proposed testimony, which is not substantiated by the radio
7 traffic, that he saw someone -- because, you know, Your Honor,
8 there is a callout. If you see someone loading on the border,
9 you call out 1046. There was no 1046 called out. 1046 means
10 vehicle being loaded. And there was no 1046 callout on the
11 radio transmission.

12 So even if you believe Ms. Ramirez's version of what
13 Mr. Compean might testify to if he takes the stand, then under
14 those circumstances, the Government would posit that the amount
15 of marijuana was irrelevant, because there's no way he could
16 have known how much. And, I don't know, maybe they think the
17 more marijuana somebody has the more right they have to shoot
18 them, but they don't.

19 And so, in the alternative, the Government would
20 request they be able to redact the I 44, which was authored by
21 Mr. Compean, that says, Subject ran back into Mexico, which the
22 subject didn't run back into Mexico. He was shot, he fell, he
23 limped back into Mexico. But, aside from that, the amount of
24 the marijuana certainly would not be relevant.

25 And I want to point out something in both of these

1 motions to the Court. A motion in limine doesn't mean that
2 it's never relevant. A motion in limine doesn't mean that it's
3 never admissible. A motion in limine simply means that,
4 starting out in the case, you can't talk to it, you can't refer
5 to it, especially in opening.

6 Because, you know, Ms. Ramirez wants to tell them how
7 lawless it is on the border, and then she's going to prove it.
8 And how does she tell the Court she's going to prove it?
9 Through cross-examination of the Government's witnesses? How
10 does -- if she's going to prove her client's intent, because
11 that's what both defense counsel say all this evidence goes to
12 is intent, she's going to prove her client's state of mind
13 through cross-examining the Government's witnesses, who are
14 going to testify about what they observed and did on that day?
15 That certainly doesn't open the door. They can't open the door
16 themselves.

17 Basically, a motion in limine says exactly -- to
18 prevent what Ms. Ramirez wants to do. You cannot talk about
19 lawlessness on the border, because how do you separate it? If
20 she talks about lawlessness in her opening statement, how does
21 the jury separate specific instances that maybe her client is
22 going to testify to, if he testifies; but if he doesn't, he
23 won't; but that she's going to try to elicit from the
24 Government's witnesses on cross-examination, for what reason I
25 don't know, because only the defendant can tell you what's in

1 his state of mind. And then the damage is done.

2 So all the motion in limine is, is rule right now.

3 You don't talk about it until some reason arises; till the
4 Government puts on evidence that makes it relevant and
5 admissible and not a waste of time and not a rabbit trail or
6 misleading or confusing, or until the defense does.

7 And that's all the Government is asking for in these
8 motions in limine. It's don't let them, out of the chute, talk
9 about something they may not be -- that may not be relevant in
10 this case until the Court has heard the evidence, and not to
11 ask it in voir dire, other than the general questions that the
12 Court might ask about newspaper articles and such.

13 And then, if it becomes relevant, no harm, no foul.
14 The Court rules at that time that they can go into it.

15 THE COURT: Response, Mr. Peters?

16 MR. PETERS: Yes, Your Honor.

17 Your Honor. I would, at this time, offer into
18 evidence Defendant Ramos Exhibit Number 1. It's a photograph
19 that has been produced to us in discovery of the van in
20 question.

21 As the Court can see -- I don't know what color that
22 van is. I'm a man and a little color blind, probably. But I
23 could describe that as blue, and I could describe it as gray.
24 It is total sophistry for the Government to try to suggest that
25 there were actually two different vans involved. There

1 weren't. There was one van. You could call it blue or you
2 could call it gray. So I would offer this into evidence.

3 MS. KANOF: I would object, Your Honor. That's a
4 photocopy of a photocopy. And we have the original
5 photographs. The van is light gray, and there is no question
6 it is not blue in the original photographs.

7 THE COURT: All right.

8 MS. KANOF: I think that's misleading.

9 THE COURT: Well, I don't have -- if the Government
10 wants to provide the original, because they believe it's
11 different, they can provide it. The Court will admit 1, I
12 guess defense counsel 1.

13 MR. PETERS: Thank you, Your Honor.

14 THE COURT: Go ahead.

15 MR. PETERS: Your Honor, there are two issues. First
16 of all, I agree with the Government with most of the argument
17 made to this extent.

18 The drug dealing and smuggling and illegal entry and
19 other criminal acts of Mr. Aldrete-Davila are not admissible
20 for proof of his character or truthfulness. And we're not --
21 we wouldn't propose to bring that in for that purpose.

22 They are admissible, however, for two -- under two
23 basic reasons. Okay?

24 The one that we haven't discussed, and I will start
25 out with that, is because it is -- because the Government has

1 given him an immunity agreement, which has -- which prevents
2 them from prosecuting him for matters that he discloses during
3 his testimony.

4 What this is admissible for is to show bias and motive
5 by the witness. The case I would cite for that is Davis versus
6 Alaska, 94 Supreme Court 1105, a 1974 case, that said, A
7 witness' possible biases, prejudices, or motivation are subject
8 to exploration or trial -- at trial, and are always relevant at
9 discrediting the witness and affecting the weight of his
10 testimony.

11 THE COURT: Hold on just a second. 94 Supreme
12 Court -- give it to me again.

13 MR. PETERS: 1105.

14 THE COURT: Go ahead.

15 MR. PETERS: And, Your Honor, there is a more recent
16 case than that, in 1996, which came out of the Western District
17 of Texas. And it was called United States versus Alexius. And
18 it's found at 76 F3d 642.

19 In that case the defendant was charged with perjury.
20 And a witness, who was under potential felony charges, was
21 allowed to testify. And the Court would not allow the defense
22 to go, in cross-examination, into those pending felony charges.

23 The Fifth Circuit reversed, finding that the accuracy
24 and truthfulness of the witness' testimony were key elements in
25 the Government's case. It's a violation of the confrontation

1 clause not to permit the defendant to cross-examine a witness
2 concerning potential criminal charges that he's got a deal with
3 the Government on pertaining to his testimony.

4 This -- this defendant -- I mean, this -- this witness
5 could be prosecuted for possession of some 700 pounds of
6 marijuana, for smuggling it into the country, for illegally
7 entering the United States. All of these actions are actions
8 which the Government apparently has chosen to forgive in order
9 to obtain his testimony against these defendants.

10 So, to prevent us from exploring those charges and
11 their ramifications and the potential punishment that he could
12 receive if he didn't cooperate with the Government, which
13 pertains directly to the amount of marijuana that was in the
14 van, for him to -- for them to prevent us to do that would
15 absolutely deny both defendants a fair trial, and it would
16 violate their fundamental right to confrontation of witnesses.

17 There's a reason, though, and it's a little bit more
18 prosaic, but I would like the Court to consider it, as well.
19 And it is similar to the arguments that we were discussing
20 regarding the dangerousness of the border.

21 Now, the Government wants to tell the jury that when
22 these agents became involved with Mr. Aldrete-Davila, as far as
23 they knew, he was just out there walking down the street,
24 walking along the river doing a nature walk or something.

25 The fact is that they knew, from the information they

1 had, as well as from the nature of Mr. Aldrete-Davila's conduct
2 while they observed it, that he was probably -- probably --
3 involved in illegal activity, and specifically drug dealing.

4 Look, there's going to be a dispute, I take it from
5 what the Government just told you, over whether or not
6 Mr. Compean notified other agents that he'd seen people who had
7 loaded this van running away. Maybe that's in dispute. It's
8 our contention that he did.

9 What the evidence will show is that by the time my
10 client, Mr. Ramos, saw this van and got behind it to try to
11 pull it over, the van sped up, went at a high rate of speed,
12 went back down -- turned around from Fabens, went several miles
13 down toward the river, ran into a ditch -- this van was being
14 operated so recklessly and dangerously that it almost went in a
15 ditch. And then Mr. Aldrete-Davila jumps out and starts to
16 flee.

17 And the evidence will show also, from my client's
18 perspective, that he got in a fight with another agent, that
19 this other agent, for whatever reason, determined that he
20 needed to fire his weapon, and -- because my client heard that
21 weapon discharge, even though my client was down in the ditch
22 and couldn't see what was going on at the time.

23 Now, all these -- all these incidents are of a type
24 that would lead a reasonable law enforcement official, a
25 reasonable Border Patrol agent, to believe that some serious

1 illegal activity is underway.

2 Because people that are just trying to come across the
3 border and go to work, they usually don't do this kind of
4 activity. They don't usually flee in a van back toward the
5 river at a high rate of speed. They don't usually get in
6 fights with Border Patrol agents.

7 So for them to say, Well, they had no idea that there
8 was any drugs in this van, that's not true. They had a
9 reasonable suspicion, at least, that there were drugs in that
10 van. And any of their actions that occurred afterwards were
11 colored by that belief. And the fact that they were right,
12 that there were a lot of drugs in that van, is relevant to the
13 objective reasonableness of their actions.

14 And so for both of those reasons, both those reasons,
15 both the ones having to do with our right to show the witness'
16 bias, as well as those showing whether or not there was a
17 reasonable formation of probable cause to believe that -- that
18 this individual posed a danger, the information about his
19 illegal activities should be admitted.

20 Thank you, Your Honor.

21 THE COURT: All right. Ms. Kanof, response?

22 MS. KANOF: Your Honor, I'm going to go backwards.
23 I'm going to deal with the prosaic point first.

24 The fact that they were right goes to their intent?
25 The fact they didn't know something at the time and turns out

1 that something existed goes to their intent? That doesn't even
2 make sense.

3 I would tell the Court that Mr. Ramos was acting
4 illegally and contrary to Border Patrol rules and regulations
5 when he chased this van. They weren't to engage in a
6 high-speed chase. And it's the same for the police department
7 as it is for the Border Patrol. Almost all law enforcement
8 officers have to follow this rule. They have to get permission
9 from the supervisor.

10 And the minute that that van started going at a high
11 rate of speed, the Border Patrol agent was required to break
12 off, whether he thought there was a million tons of marijuana
13 in the vehicle. Their primary right, under law, is
14 immigration. And the fact that they suspected the marijuana
15 makes what they did worse, not better.

16 Because, for an immigration stop, you may not engage
17 in a high-speed chase. This was a high-speed chase. Defense
18 counsel just admitted it. He said the high rate of speed of
19 the van, when it turned around. And they had no right, without
20 getting authority from a supervisor. The supervisor was never
21 radioed and asked, and the reason is because the supervisor
22 would have said, No, you may not engage in a high-speed chase.
23 It's too dangerous.

24 And that's the reason they have to get permission, is
25 it's very dangerous to the community. It's dangerous for the

1 officer. It's dangerous.

2 So I don't know that -- how prosaic that is. But the
3 very fact that a high-speed chase ensued has nothing to do with
4 their intent, because they have no right to have the intent to
5 go after a drug dealer in and of itself on the border.

6 Now, with regard to the immunity. I do agree with
7 defense counsel that he is allowed to question Osvaldo
8 Aldrete-Davila regarding the immunity agreement.

9 I disagree with him that -- the extent of that
10 cross-examination. There are many, many cases, some of which I
11 cited in my motion, that deal specifically with immunity
12 agreements and the extent to which the cross-examination can
13 ensue.

14 He can, for the limited purpose, ask whether or not
15 the Government agreed to forego prosecuting him, which we did,
16 for any crime he would have been committing on that day.

17 I think it's probably even admissible to say that
18 he -- that that was a marijuana crime, or a crime that went to
19 him being illegally in the United States. Although that's kind
20 of questionable, because Mr. Aldrete-Davila has no record of
21 immigration violations, which means being found in the
22 United States, not knowing when he crossed or how he crossed,
23 is probably not even a misdemeanor. It might be a 1325 and
24 might not be a 1325, and we don't -- we don't prosecute them,
25 so that's of little relevance.

1 But, regardless, I think he can ask him, for that
2 limited purpose, whether or not he was granted a benefit.

3 The amount of marijuana is different, though, Judge,
4 because there are a lot of things that go into punishment. And
5 who knows -- we didn't promise him we would or would not give
6 him a minimal role or a minor role. We didn't promise him
7 whether or not we'd give him safety valve. We didn't promise
8 him whether or not he could have a 5K.

9 All the Government did is said -- and we basically had
10 to beg him. He didn't want to come and talk to us about this.
11 We found out about it and had to go to the Mexican consulate --
12 the United States consulate in Juarez to give him a letter of
13 immunity to get him to even talk about this.

14 And so we basically gave him blanket immunity for any
15 drug or immigration crime that he might have been committing on
16 that day.

17 So I agree that, for that limited purpose, but that --
18 the Court can stop that. The Court can then limit the extent
19 of the cross-examination, once defense counsel have achieved
20 that purpose.

21 And there's even case law that says if the Government
22 asks him about it, that's going to be very limited, because the
23 point has been made, and then not necessarily not exclude it
24 for any other purpose.

25 So, under those circumstances, the Government does

1 selectively, and within those confines, agree with defense
2 counsel.

3 THE COURT: Response, Mr. Peters?

4 MR. PETERS: Let me point out first that I did not say
5 that Agent Ramos engaged in a high-speed chase. I said the van
6 fled at high speeds. And I believe that the evidence will show
7 that Agent Ramos followed, but not at those high speeds.

8 Whether that's a violation of the regulations of the
9 Border Patrol or not, I don't really know. To me, it's
10 irrelevant, because it's still a significant factor in deciding
11 whether or not the person who's being pursued is -- is a -- is
12 engaged in some serious criminal activity, which goes to the
13 reasonableness of a determination that this is dangerous, that
14 the person has been assaulted.

15 And, you know, the fact that there is half a million
16 dollars worth of marijuana or more, according to the
17 Government's estimates in their reports, in this van, is
18 relevant to whether he had a weapon. I mean, you know,
19 certainly -- you know, I think it's common sense to say that if
20 somebody is entrusted with \$500,000, \$600,000 worth of
21 marijuana, they might want to protect it.

22 The activities that this alien engaged in, within the
23 view of my client, were such that it was reasonable to assume
24 that he was a dangerous person. So that when that individual
25 pointed what my client thought was a weapon at him, it was --

1 that made his determination a lot more reasonable.

2 And I think that this notion that it has to do with
3 the agent's state of mind, that's not exactly an explanation --
4 that's a little bit of an inaccurate statement of what we're
5 trying to say.

6 The question is whether or not the agent did form a
7 reasonable opinion, based on all circumstances, including this
8 alien's conduct within his view, that the alien was a danger to
9 him or someone else.

10 And, as far as the question of -- of the -- of
11 limiting the amount of examination that we would be entitled to
12 in order to show the witness' bias, you know, there's a lot of
13 different bias if you're looking at 30 days for possession of a
14 small amount of marijuana versus -- you know, the amount of the
15 marijuana is relevant -- is the first factor, I think, if you
16 look at -- on the sentencing guidelines. That's where you
17 start.

18 So the fact that it was a large quantity of marijuana,
19 I think, is extraordinarily relevant to the bias of the
20 witness, and the jury should be entitled to see what the
21 Government is giving him in return for his testimony. They're
22 paying him more, to coin a phrase, because of the quantity of
23 the marijuana, than they would have been if it was less
24 marijuana.

25 THE COURT: I have a question for you, Mr. Peters.

1 MR. PETERS: Yes, ma'am.

2 THE COURT: Was it -- how would you feel about a
3 stipulation regarding the issue of immunity, a stipulation by
4 both parties, all parties, that the complaining witness had
5 been given immunity.

6 MR. PETERS: I don't object to a stipulation, but I
7 would consider it entirely inadequate, because in terms of --
8 are you talking about in lieu of being able to cross-examine
9 Mr. Aldrete-Davila about his immunity agreement?

10 THE COURT: Yes. In other words, a stipulation
11 regarding the immunity agreement.

12 MR. PETERS: Your Honor, I think we should -- I think
13 we need to, and we are entitled to, and we should be allowed,
14 to cross-examine Mr. Aldrete-Davila about the effects of this
15 immunity agreement on this testimony.

16 Just to say, Hey, he's got an immunity agreement, I
17 mean, that's nothing. We need -- we need to explore his bias
18 on the witness stand in front of the jury, through the machine
19 of cross-examination.

20 THE COURT: All right.

21 MS. KANOF: Your Honor, the reason this is different
22 than in the case law that Mr. Peters cited, than in any other
23 case, is that Mr. Aldrete-Davila wasn't caught in the
24 United States with drugs. We didn't have him to prosecute him.
25 He was in Mexico. He didn't want to talk to Rene Sanchez. He

1 didn't want to talk to Chris Sanchez. And he didn't want to
2 talk to us.

3 He was afraid, initially, when Chris Sanchez, the DA's
4 OIG agent, contacted him, that it was a lure, that we were
5 trying to lure him to the United States to arrest him.

6 So we actually went into Mexico to immunize him. We
7 didn't have jurisdiction to arrest him for anything. So it's a
8 different kind of way to view immunity.

9 You know, it's a different promise. It's not just a
10 promise, you know, We caught you, buddy, and you're going to
11 face this high sentence, because you had 750-plus pounds of
12 marijuana; therefore, we're giving you the immunity to testify.

13 It's, Please come to the United States. If you come
14 to the United States, we're not tricking you. We're not going
15 to prosecute you. It's a different situation than you would
16 have in the average case where, yeah, if we had caught him on
17 this side of the border -- you know, if the agents, after they
18 shot him and he fell, had gone and handcuffed him and then we
19 had given him an immunity, it would be a different situation
20 than us actually finding out that -- that we had two
21 individuals that had committed a crime, and then seeking the
22 witness.

23 He doesn't have to be here, Judge. You know, we never
24 would have had him. So it's not the same situation. The Court
25 needs to take that into consideration.

1 Another thing, I know -- I'm not a drug prosecutor,
2 Your Honor. It's been many -- it's been, gosh, like 15 years
3 since I prosecuted drug offenses as a routine. And so -- but I
4 do review cases, as a supervisor. And I will tell the Court
5 that his reasonable inference that the amount of drugs presents
6 a more substantial likelihood of guns is just not true.

7 We get 3,000 -- I also do duty. We get 3,000-pound
8 loads in tractor/trailers all the time, and they don't have
9 guns. And agents know that.

10 The number of guns found on anyone arrested with dope
11 at the border in the year preceding this was zero, in Fabens
12 sector. Zero. No guns were seized for any amount of marijuana
13 in the Fabens sector in the year preceding this offense.

14 We're currently getting the statistics, in case we
15 have to go down that rabbit trail, for five years for the
16 entire border. But it's going to be very low. They don't
17 carry guns.

18 And it cannot be a reasonable inference to ask the
19 jury to draw, because it's not true. It would be a reasonable
20 inference that the defense would be asking, but they know it's
21 not true, because we can provide the facts to them.

22 So the Government, in response to the Court's inquiry
23 to Mr. Peters, would be very satisfied with a stipulation. And
24 the stipulation could say, in fact, that he did have marijuana
25 on that day and was illegally in the United States. But I do

1 think, under his circumstances, and the usual circumstance, in
2 that the Government's benefit is not in exchange for his
3 prosecution, the Government's benefit is in exchange for him
4 assisting the Government in getting two people that committed a
5 crime in shooting him, is a different situation. And the
6 Government would -- we think that would be sufficient.

7 THE COURT: All right. Anything else you want to
8 respond to before I allow Ms. Ramirez?

9 MR. PETERS: Just briefly, Your Honor.

10 THE COURT: Go ahead.

11 MR. PETERS: Your Honor, if the Government wants to
12 try to -- if they think it's important to show that they
13 wouldn't have had him, or that he wouldn't be here -- you know,
14 you've got Ms. Kanof's tes- -- or statement of that. I don't
15 know what other evidence there might be. Maybe that's
16 something that would be relevant for them.

17 But the fact is, they had the van, they had -- before
18 they ever talked to him, they knew who he was, and they knew he
19 had been -- that he had a bullet they believed that was fired
20 by my client, and they knew that he was the individual driving
21 the van.

22 Whether or not they could have extradited him or
23 whether or not they would have caught him again, that's a
24 different matter.

25 They had enough evidence -- they have enough evidence

1 to convict him without his testimony, but they're not going to,
2 because -- because they've given him immunity, and I'm sure
3 they're going to follow it.

4 But he -- you know, he has gotten a valuable promise
5 from the Government in return for his testimony, and we are
6 absolutely entitled to develop it. And it seems to me that we
7 should -- the nature of that promise and what it's worth to him
8 reflect directly on his bias, his motive, and how his testimony
9 should be evaluated.

10 THE COURT: All right. Ms. Ramirez?

11 MS. RAMIREZ: I don't see why it makes a difference
12 whether -- I was thinking about Ms. Kanof's argument, and why
13 it makes a difference whether he got immunity or whether he was
14 in Mexico or whether he's here.

15 I mean, the fact is that he doesn't get to serve any
16 time either way. Either they brought him from Mexico and they
17 gave him immunity, or he was here in the United States and they
18 gave him immunity. And, either way, he doesn't get to serve
19 any time.

20 And the fact is, it was 700 pounds of marijuana. The
21 street value of the marijuana was over \$500,000, half a million
22 dollars. And he doesn't have to face the mandatory minimum
23 sentence in prison, which is five to 40 years in prison.

24 And if we cannot explore that, as I stated in my
25 response to the Government's motion in limine, then how are we

1 going to be able to cross-examine him on motive, on bias, and
2 on his credibility, on his ability to be able to be truthful,
3 in front of the jury?

4 I think that it will violate my client's Sixth
5 Amendment right which he has to confront and cross-examine the
6 witnesses, if we are not -- if we are unable to do that.

7 And I think stipulating to an immunity agreement does
8 not let my client explore Mr. Osvaldo Aldrete's credibility and
9 his ability to tell the truth or not to tell the truth.

10 He has every advantage. He has every motive to lie up
11 there, if the Government is giving him this immunity agreement.
12 He has every motive to say what the Government wants him to
13 say, because of this immunity agreement.

14 Whether they gave it to him in Mexico, by luring him
15 here, or whether they gave it to him here, he's not going to
16 have to serve any time for coming in and for -- for coming in
17 illegally or for bringing these drugs, either picking them up
18 here or bringing them in illegally. And I think that the
19 defendants should be able to explore that.

20 And I think the Rules of Evidence 608(b) and the Sixth
21 Amendment right gives the defendants that ability. And I would
22 ask the Court to let us explore that in front of the jury.

23 THE COURT: All right.

24 MS. KANOF: Judge, here's -- here is how it's
25 different.

1 He stops with a van, he runs across the border, gets
2 shot. How would we have ever prosecuted that? We wouldn't
3 know who it was. We wouldn't have known who the driver was.
4 Nobody could ID him. Nobody had stopped and put his
5 fingerprint in IDENT, to see if he'd ever been a -- with a
6 crosser. They would have found him in IDENT if they had his
7 fingerprint, if they had stopped him, instead of shooting him
8 and letting him limp across.

9 There would be no ID. And you have to -- when you
10 prosecute someone, you have to know who the person was that
11 left the marijuana there, and the Government wouldn't have
12 known.

13 Because, if the Government knew, in the month --
14 between the time the incident happened and we found out about
15 it in a circuitous way, we would have been investigating.
16 Mr. Compean and Mr. Ramos would have been assisting agents at
17 the Drug Enforcement Administration to figure out who it was
18 that dumped that marijuana on this side of the border.

19 That didn't happen, though. We didn't have a case on
20 anybody, because we didn't know who did it.

21 What happened is, Osvaldo Aldrete-Davila's mother is
22 the friend of a woman in Mexico whose son-in-law is a Border
23 Patrol agent in Willcox, Arizona. The mother tells the
24 mother-in-law, My son got shot in Fabens.

25 The mother-in-law tells her son-in-law, who is a

1 Border Patrol agent in Willcox, Arizona, Hey, my girlfriend's
2 son got shot by Border Patrol agents.

3 And he says, No one from El Paso. And I'm friends
4 with those guys. I never heard about a shooting in February in
5 Fabens.

6 So he calls some buddies and asks. Everybody says,
7 No, there was no shooting.

8 So he goes and he talks -- he talks to him on the
9 phone. He says, Well, can I talk to -- to -- to the -- can I
10 talk to the man?

11 And the guy tells him what happened.

12 So he reports it to the Department of Homeland
13 Security, Office of the Inspector General, in Washington, D.C.
14 Okay?

15 The only reason we have the bullet, the only reason we
16 have Osvaldo, the only reason we know who had that dope, is
17 because he volunteered to cooperate. He volunteered to undergo
18 surgery at William Beaumont Army Medical Hospital -- we
19 couldn't have forced that -- to get us evidence. He
20 volunteered to cooperate.

21 It's a very different scenario. Without his
22 volunteering act we wouldn't have been able to even prosecute
23 him. We wouldn't have known who it was.

24 Thus, in determining bias, the motive is different,
25 because he confessed to us, basically, that it was him. And he

1 didn't confess at the time. He confessed subsequently, because
2 we asked him to. And it's a very different scenario than
3 defense counsel are talking about.

4 And they said, Well, they could have lured him into
5 the United States.

6 Who would we have lured? Okay?

7 First of all, you have to get a permission to lure
8 from the Department of Justice, Office of Enforcement
9 Operations, and it's very hard to get. And, no, we couldn't
10 have lured him, I'll tell the Court.

11 Secondly, who would we have lured? We didn't know
12 where he lives, who he was. We didn't have any identification.
13 I don't know who we would have lured.

14 And a quick little statement about extradition, we
15 could have extradited him. To extradite somebody, boy, you
16 have to give a packet, you know, as big as -- as long as my
17 arm, to the Department of Justice, Office of International
18 Affairs. And they have to authorize it. And, right now,
19 Mexico is not extraditing Mexican citizens.

20 So, no, we couldn't have extradited him, particularly,
21 because we didn't know who "him" was.

22 So I just wanted to point that out to the Court, that
23 this is not the typical -- and I don't even know if there's any
24 cases on this. This isn't the typical, We got you, now we're
25 going to give you a lot of benefit to cooperate.

1 The benefit was very different, and I think a
2 stipulation would cover it.

3 MS. RAMIREZ: Judge, they could have found out who it
4 was, because Agent Sanchez eventually told them that it was
5 Osvaldo Aldrete-Davila.

6 And he didn't say, Hey, I came to the United States,
7 and I had marijuana with me, and then I got shot as I was
8 coming back into -- as I was fleeing into Mexico.

9 He just said, I came into the United States illegally,
10 and as I was coming back into Mexico, somebody shot me. So he
11 lied about that.

12 Then, when they found out that it was Osvaldo
13 Aldrete-Davila, he didn't want to talk. First, they had to
14 give him the immunity. And they -- one of the agents met him
15 in Mexico, gave him the immunity, and only after that did he
16 confess to the marijuana. We're entitled to cross-examine him
17 on that.

18 And then, we're entitled to cross-examine him on the
19 fact they're giving him free medical surgery, or free medical
20 benefits, here in the United States. Because they had to give
21 him that, in order to bring him into the United States to get
22 the bullet.

23 They're also offering him more medical benefits,
24 because they're going to do some kind of reconstructive
25 surgery. And I think we're entitled to cross-examine him on

1 that.

2 The agent that's bringing him back and forth from
3 Mexico, Agent Sanchez, has been talking to him, knows where he
4 lives. And I think we're entitled to cross-examine him on
5 that.

6 And the Government doesn't want the defense to
7 cross-examine him on that, because -- I guess because they
8 think that that -- a stipulation on the immunity agreement
9 would be enough.

10 If they're concerned about all those facts, they can
11 explain it to the jury. They can tell the jury, All these
12 circumstances happened. Everything happened in this manner.

13 But I think to take that away from us, to be able
14 not -- for the defense not to be able to bring up all the
15 circumstances, how he lied at the beginning, that he got
16 immunity for the marijuana, that he's getting free surgical and
17 free medical care by the Government, I think that that all goes
18 to his bias to lie, his motive to lie, and his character for
19 being untruthful, and we should be allowed cross-examine him on
20 that.

21 THE COURT: Anything further?

22 MS. KANOF: No, Your Honor.

23 THE COURT: Anything further?

24 MR. PETERS: No, Your Honor.

25 THE COURT: All right. The Court will take both

1 motions under advisement. There will be a ruling before 5:00
2 this afternoon. And, as counsel knows, we will be back here
3 Wednesday.

4 Anything further before we recess?

5 MS. KANOF: Nothing from the Government, Your Honor.

6 MS. STILLINGER: No, Your Honor.

7 THE COURT: All right. Court stands in recess.

8 (Transcript continues in Volume IV.)
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10 * * * * *

11 I certify that the foregoing is a correct transcript

12 from the record of proceedings in the above-entitled matter. I

13 further certify that the transcript fees and format comply with

14 those prescribed by the Court and the Judicial Conference of

15 the United States.

16

17 Signature: _____ Date: _____

18 David A. Perez, CSR, RPR

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David A. Perez, CSR, RPR